

LFC Requester:**Jana Amacher**

**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment**
Correction **Substitute**

Date Jan. 14, 2016

Bill No: SB 41

Sponsor: Michael Padilla

Agency Code: 305

Short Create State Inspector General

Person Writing Brian Parrish

Title: Office

Phone: 827-6624

Email bparrish@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

Synopsis:

Senate Bill 41 ("SB 41") establishes an Office of the Inspector General ("OIG") under the legislative branch of the New Mexico Government and empowers the OIG to investigate and inspect all the branches of the New Mexico Government, their boards, bureaus, commissions, committees, departments and institutions.

SB 41 also creates the Inspector General Oversight Committee ("IGOC"), a permanent interim legislative committee, composed of active members of the legislature, with the power to appoint an Inspector General ("IG"); establish the IG's annual compensation; hear reports from the OIG; oversee the budgets and operations of the OIG; and with the discretion to terminate the OIG. The Legislative Council Services would provide staffing for the IGOC.

The IG would receive and investigate complaints about fraud, waste, abuse, illegal acts and corruption by any employee or agent of the state. Unless limited by another law, the IG would have the authority of unfettered access necessary to carry out the duties of the office to all records, data, reports, contracts, memoranda, correspondence and other information as required from all the branches of the New Mexico Government, their boards, bureaus, commissions, committees, departments and institutions.

Upon investigation, the IG would determine whether to refer a matter to the Attorney General, the State Auditor, a district attorney, or to another prosecutorial or administrative agency for any further actions that may be appropriate. The IG would also report the findings of any investigations to the agency involved and other elected and appointed officials and that report would also be made public. Also, the IG would be charged with the duty to immediately report a "serious problem...or agency's interference" to that agency and the IGOC. The OIG would also have the authority to conduct trainings, collaborate with other agencies, make recommendations to and monitor the implementation of those recommendations.

SB 41 would also require the OIG to make an annual report at the end of each fiscal year, starting with 2017, and provide a copy of that report to the Governor and the Legislature, and submit to a periodic "objective, quality assurance review by an appropriate professional, nonpartisan organization," which will be reviewed by the IGOC.

SB 41 also appropriates five hundred thousand dollars (\$500,000) from the general fund to the Legislative Council Services to carry out the provision of the Inspector General Act for fiscal year 2017 only.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

Section 4(A), p. 2, ln. 10-11: Creating the OIG “in the legislative branch of government” may implicate Article III, Section 1 of the New Mexico Constitution, which provides that “no person or collection of persons charged with the exercise of powers properly belonging to [the legislative, executive, or judicial] departments, shall exercise any powers properly belonging to either of the others, except as in this constitution otherwise expressly directed or permitted.” It appears that the OIG performs a function of the executive department, ensuring the faithful execution of the laws of the State of New Mexico, and thus establishing the OIG in the legislative branch may create a separation of powers concern.

Section 5(B), p. 3, ln. 6–p. 4, ln. 5: “The inspector general oversight committee shall....” As noted above, this section may raise separation of powers concerns and could be interpreted as an exercise of power by the legislative department that is properly attributed to the executive department.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

Section 6(B)(2), p. 5, ln. 19–22: Suggest for clarity, revising the clause to read, “investigate and inspect a person or legal entity with which an agency has entered into a contract...,” because it is not clear whether person refers to only an individual or also to other legal entities that may enter into contracts, provide good and services, or receive grants.

OTHER SUBSTANTIVE ISSUES

Section 6(A)(1), p. 4, ln. 9–11: “receive and investigate complaints....” HB 41 provides for

an independent investigation by the OIG from any source of all complaints of matters in any agency (as defined by Section 3(A), which in the plain language would include all departments (legislative, executive, and judicial) and their subdivisions, contractors, and employees, etc., see SB 41, Section 6(B)). This could result in multiple investigations by multiple state agencies, which might result in duplicative expenditures of resources and efforts unless there is a coordination of investigations between agencies.

Section 6(B)(11), p. 6, ln. 23-25: “delegate the powers outline in Paragraph 10 ... to a duly authorized deputy inspector general;” SB 41 does not provide for the authorization of deputy inspector generals, thus, it is unclear who would have the authority to authorize a deputy inspector general, and Section 6(B)(11) suggests that a deputy inspector general (“DIG”) would only have the power and authority to exercise the powers outlined in Paragraph 10. As such, it is not clear if a DIG would have the power to investigate, inspect, audit, monitor, or otherwise assist the IG in the performance of the duties of the office.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None